

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
HARRY AND BEVERLY KLASMAN )

Appearances:

For Appellant: S. Sanford Ezralow,  
Certified Public Account

For Respondent: Burl D. Lack, Chief Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on protests to proposed assessments of additional personal income tax in the amounts of \$3,619.72 against Harry and Beverly Klassman for the year 1953 and \$3,848.29 and \$5,119.46 against Harry Klassman for the years 1954 and 1955, respectively.

Since Beverly Klassman is involved in this appeal only because she filed a joint return with her husband, Harry Klassman, he alone will be referred to hereafter as the 'Appellant.

Appellant operated a legal draw poker establishment in Gardena, California, known as the Embassy Club. The house (Embassy Club) collected half-hourly seat rentals from all players. It employed so-called house players to make up the necessary minimum of players to start games or keep them in progress. House players were provided with money with which to bet and pay seat rentals, and were ordered to play in a conservative manner. When a house player left a game, he returned to the house all of the money remaining in his possession, reduced from the original amount by his payment of betting losses and seat rentals or increased by his winnings. At the end of each of the years in question, the total of the amounts returned by the house players was less than the total of the amounts originally provided them. The difference was deducted by the house as a business expense.

Respondent has allowed deduction of the amounts attributable to the seat rentals paid by the house players. It asserts, however, that Section 17206(d) (formerly Section 17308) of the Revenue and Taxation Code controls with respect to the betting losses. That section provides that "Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions."

Appeal of Harry and Beverly Klassman

In Appeals of Ernest J. and Evelyn Primm, et al., Cal. St. Bd. of Equal., July 23, 1959, 2 CCH Cal. Tax Cas. Par. 201-324, 3 P-H State & Local Tax Serv. Cal. Par. 58159, we held in a case identical to this that the transactions engaged in through the house players were wagering and losses arising from them were governed by Section 17308 (now Section 17206(d)) of the Revenue and Taxation Code. This section is a specific one dealing with losses arising from wagering transactions. It necessarily precludes the deduction of such losses as ordinary and necessary business expenses.

We hold, therefore, that the Primm case is applicable here and that the action of the Respondent must be sustained.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on protests to proposed assessments of additional personal income tax in the amounts of \$3,619.72 against Harry and Beverly Klassman for the year 1953 and \$3,849.29 and \$5,119.46 against Harry Klassman for the years 1954 and 1955, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of February, 1962, by the State Board of Equalization.

George R. Reilly, Chairman

John W. Lynch, Member

Paul R. Leake, Member

Richard Nevins, Member

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ATTEST: Dixwell L. Pierce, Secretary